

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:)	
)	
Coastal Television Broadcasting Company LLC)	
)	
Complainant)	MB Docket No. 18-208
)	CSR-8961-C
v.)	
)	
MTA Communications, LLC)	
)	
Defendant)	
)	

To: Office of the Secretary
Attn: Chief, Media Bureau

REPLY TO ANSWER TO GOOD FAITH NEGOTIATION COMPLAINT

Coastal Television Broadcasting Company LLC (“Coastal”), pursuant to Section 325(b)(3)(C) of the Communications Act of 1934, as amended, and Sections 76.7 and 76.65 of the Commission’s Rules, hereby files this Reply to the Answer of MTA Communications, LLC (“MTA”) to the Complaint filed against MTA by Coastal in the above-referenced docket.¹ In its Answer, MTA essentially concedes its lack of good faith. Put simply, MTA has made multiple counter-offers that backtracked on their previous offers, simply increasing the gap between the parties. In between those counter-offers, MTA forced Coastal to wait months with no response at all. MTA has now once again broken off negotiations, declaring the parties at an impasse; again without providing a counter to Coastal’s last offer. While it may ultimately prove true that no agreement may be reached, any reasonable understanding of good faith would require that MTA at

¹ Coastal notes that MTA’s Answer fails to comply with Sections 1.49(b) and (c), which require that all documents filed with the Commission in excess of 10 pages must include a summary and table of contents with page references, and should therefore be dismissed.

least attempt to bring the parties closer together in a negotiation, something it has consistently refused to do since December, when MTA had been within 5 cents of agreement with Coastal before its repeated backtracking and egregious delay.

I. MTA Misunderstands What Constitutes a Counter-Offer.

MTA attempts to claim that Coastal made a “take it or leave it” offer, although it does not specify or document when precisely this offer was made.² If MTA is referring to Mr. Center’s statement of where Coastal “really need[s] to be” during his phone conversations with Mr. Babbit in December that statement could not, in the context in which it was made, be considered a take it or leave it offer. It was simply a statement of where Coastal believed the agreement should end up, but not a blanket rejection of any counter-offer. Of course, for the vast majority of the time since negotiations began, Coastal was forced to simply wait to receive such a counter-offer that it could reject. MTA’s Answer, as well as their actions throughout their “negotiations” with Coastal, seem to fundamentally misunderstand what constitutes a counter-offer. As described by MTA on page 8 of its Answer, Mr. Babbit’s claimed “counter-offer” consisted only of a vague range of dollar amounts, as well as two questions regarding language in the agreement (which had in fact already been addressed). When presented with a specific financial proposal, as Coastal had made to MTA, good faith requires a specific counter-proposal, not an ill-defined statement of “parameters.”³ Despite MTA’s claim, there was absolutely nothing unreasonable in Coastal requesting a specific counter-offer, rather than negotiating against themselves. Instead of responding to this request, however, MTA chose to cut off communications for four months, unreasonably delaying negotiations.⁴

² Answer at page 5.

³ See *HITV License Subsidiary, Inc.*, 33 FCC Rcd 1137, 1140 (2018).

⁴ See Answer at pages 8-9, acknowledging that specific counter-offer was not provided until May 7.

II. MTA Has Not Explained the Reasons for Rejecting Coastal's Proposals.

When MTA did decide to rejoin negotiations, it again made no effort to actually reach agreement, instead continuing to increase the difference between the parties by again reducing its previous offer, without explaining what changed circumstances warranted this reduction other than vague reference to feedback from its members. However, such an “explanation” is akin to a negotiator changing his or her position based on a claim that “my owner changed his mind.” While it may be true that the ultimate decision maker modified their position, this hardly constitutes an explanation. To be able to negotiate in good faith, it would seem incumbent on MTA to ascertain the amount its members were willing to pay before making offers to Coastal that brought the parties to within a nickel of an agreement in early December. If MTA knew then that its members would not agree to those rates, then it is clearly guilty of bad faith in proposing rates to Coastal that it knew it could not in fact agree to. If it was truly unaware of the rates its members would accept, it is guilty of bad faith in failing to determine, prior to entering negotiations, whether it could stand by the offers it made. In either case, it is entirely reasonable for Coastal to expect that its counterpart in a negotiation will stand by its previously made offers, something MTA has repeatedly refused to do.

In its Answer, MTA alleges that Coastal is asking for “unreasonable” and “inflated” rates.⁵ If MTA truly believes that the rates requested by Coastal are out of line with the market, and with rates paid by MTA, and other MVPDs, to broadcasters with comparable programming, it would presumably have told Coastal as much at some point earlier in the parties’ negotiations. Instead, MTA attempts to justify its continued backtracking with the self-serving, but ultimately unconvincing, claim that its members overruled its negotiators. If the rates requested by Coastal are

⁵ Answer at pages 1-2, 17.

so unreasonable, and out of line with the market, then it is difficult to explain how MTA would have agreed to come within five cents of them in early December.⁶

III. MTA's Claims of "Unclean Hands" are Unfounded.

MTA claims that Coastal has "unclean hands" in this negotiation, based in large part on statements in Coastal's social media and online articles informing its viewers of the dispute.⁷ MTA does not even attempt to explain how Coastal's attempts to inform the public of the nature of this dispute is somehow unacceptable, but focuses its argument on the claim made in a website posting by Coastal that MTA moved the difference between the parties by 1800%, a claim MTA alleges is false. Coastal's claim, however, is entirely accurate, and correctly reflects the dramatic way in which MTA has attempted only to increase the distance between the parties. As both parties have conceded, as of early December, the difference between the parties was as small as five cents in the second year of the agreement. In its subsequent counter-offer, however, MTA reduced its previous offer for that second year by 90 cents. 90 cents is indeed 1800% of 5 cents, meaning that MTA had put forth a counter-offer dramatically widening the gulf between the parties by 1800%. In fact, MTA's counter-offer was even more egregious if the entire term of the agreement is considered, since MTA also walked back its previous first year offer by 85 cents. Taking both years together, MTA in one counter-offer, and over the course of less than a month (December 5-6 to December 30), had increased the difference between the parties by a staggering 3500%. With their further reduction of their offer on May 7, MTA has now increased the difference between the parties by 4400%, from 5 cents to two dollars and twenty cents. Nonetheless, Coastal remains willing to negotiate.

⁶ Representatives of Coastal have since learned that MTA may in fact be planning to exit the MVPD business entirely, perhaps partially explaining its reluctance to negotiate in good faith with Coastal.

⁷ As demonstrated herein, Coastal has not engaged in any bad faith in these negotiations, making MTA's request for attorneys' fees moot. It is worth noting, however, that MTA has provided no argument that would justify the dramatic departure from precedent that an award of attorneys' fees would represent, even if its allegations and erroneous conclusions were accepted.

Unfortunately, as conceded in the Complaint, MTA has clearly told Coastal that it is not interested in negotiating and will not make any further counter-offers.⁸ It was this statement by MTA, not any attempt by Coastal to “gain additional leverage” that forced Coastal to file the Complaint.⁹

⁸ See e-mail from J. Babbit to S. Centers, attached to Answer as Exhibit J.

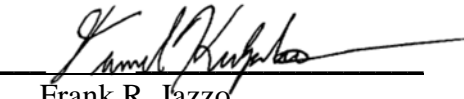
⁹ See Answer at page 17.

IV. Conclusion

Coastal is well aware that broadcasters and MVPDs may, and often do, differ in their valuation of broadcasters' content. This dispute, however, is not a simple disagreement over how much KTBY's programming is worth. Coastal does not allege that MTA's failure to agree on that valuation by itself was bad faith. What does constitute bad faith, however, is MTA's repeated attempts to "move the goalposts" in the negotiation, taking a situation where the parties were separated by a nickel, and continually moving them farther and farther from an agreement. MTA has not adequately explained why it has moved the parties apart, nor has it even done so in a timely manner, instead breaking off negotiations for months at a time, only to come back with even lower offers. Coastal respectfully requests that the Commission order MTA to negotiate in good faith, and to grant such other and further relief as it deems just and proper.

Respectfully submitted,

Coastal Television Broadcasting Company LLC

By: 
Frank R. Jazzo
Daniel A. Kirkpatrick

Its Counsel

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July 30, 2018

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To: Office of the Secretary
Attn: Chief, Media Bureau

DECLARATION OF WILLIAM A. FIELDER, III

1. My name is William A. Fielder, III. I am Chief Executive Officer of Coastal Television Broadcasting Company LLC.
2. I have reviewed the foregoing Reply to Answer to Good Faith Negotiation Complaint and all factual matters set forth therein are true to the best of my knowledge and belief. To the best of my knowledge, information, and belief formed after reasonable inquiry, the foregoing Reply is well grounded in fact; warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and is not interposed for any improper purpose.



William A. Fielder, III
Chief Executive Officer
Coastal Television Broadcasting Company LLC


Date: July 30, 2018

CERTIFICATE OF SERVICE

I, Daniel Kirkpatrick, hereby certify that on this 30th day of July, 2018, I caused a copy of the foregoing "Reply to Answer to Good Faith Negotiation Complaint" to be served via U.S. mail, postage prepaid, upon the following:

MTA Communications, LLC
1740 S. Chugach St.
Palmer, AK 99645

Shannon M. Heim
Moss & Barnett
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402
Counsel to MTA

A handwritten signature in black ink, appearing to read "Daniel Kirkpatrick", is written over a horizontal line.